formed by the obligee to enable the obligor to deliver. They are not in conflict with the principal case but are distinguishable because of special facts or circumstances.

CONTRACTS—PERFORMANCE OF CONTRACTUAL OBLIGATION.—Plaintiff agreed with defendant to construct a portion of a roadbed. The sides of the cut were to be left vertical but the condition of the soil made this impossible and it was found necessary to remove a large amount of material not contemplated by the parties. Defendant promised additional compensation for this extra labor. In an action by the plaintiff on the original contract the court submitted the subsequent agreement to the jury. Defendant contended that there was no consideration for the promise of extra pay, as plaintiff was already legally bound to do the work. *Held,* that the additional burden not contemplated in the first contract was a valid consideration for the subsequent promise, but the questions ought not to have been submitted to the jury because it was not pleaded. *Straw* v. *Temple* (Utah 1916), 159 Pac. 44.

The general rule is that a promise to pay additional compensation for doing something under a subsisting contract which the promisee is already legally bound to do is without consideration and unenforceable. *Benedict* v. *Green-Robbins Co.,* 26 Cal. App. 468, 147 Pac. 486; *Shriner* v. *Craft,* 166 Ala. 146, 28 L. R. A. 450; *Wear Bros.* v. *Schmelzer,* 92 Mo. App. 134; *Sands* v. *Gilleran,* 144 N. Y. Supp. 337; *Moran* v. *Peace,* 72 Ill. App. 135; *Bush* v. *Rawlins,* 89 Ga. 117. Some courts have taken the view that where one of the parties to a contract (other than an agreement to pay money) refuses to perform the same, and the other promises to pay extra compensation to induce him to carry out his agreement, there is a valid consideration for the promise. Under the reasoning in these cases the party has a right to elect whether he will perform the contract or abandon it and pay damages. *Domenico* v. *Alaska Packers' Assoc.,* 112 Fed. 554; *Scanlon* v. *Northwood,* 147 Mich. 139. A few decisions are based on the theory that the forming of the new contract is a rescission of the old one and that the liabilities under the latter are discharged. *Evans* v. *Ore. & Wash. Ry. Co.,* 58 Wash. 429, 108 Pac. 1095; *Coyner* v. *Lynde,* 10 Ind. 282. In *Endriss* v. *Belle Isle Ice Co.,* 49 Mich. 279, it was decided that the new agreement was independent of the old contract and was regarded as an effort to mitigate the damages caused by the breach of the latter. The principal case adopts the view that although there is ordinarily no consideration for a promise of additional pay to induce performance, yet where there is a burden not contemplated by the parties cast upon the contractor there is a valid consideration for the promise. This exception to the general rule is ordinarily followed in this country. *Linz* v. *Schuck,* 106 Md. 220, 67 Atl. 286; *Michaud* v. *MacGregor,* 61 Minn. 198; *King* v. *Duluth etc. Ry Co.,* 61 Minn. 482; *John King Co.* v. *Louisville & N. R. Co.,* 131 Ky. 46.

CORPORATIONS—CONSTRUCTION OF THE TERMS "NET ANNUAL EARNINGS" AND "SINKING FUND."—X Railroad Company purchased canals of the state which it turned over to X Canal Company in return for nearly all the stock of the latter, which it continued to hold and by means of which it entirely